IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7483 of 2002

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NIZAM A SHAIKH - Petitioner(s)
Versus
UNION OF INIDA & 2 - Respondent(s)

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Appearance :
MR NIKHIL S KARIEL for TANNA ASSOCIATES for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 14/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Heard learned counsel Mr.Kariel for the petitioner and learned Assistant Solicitor General Mr.Malkan for the respondents.

2. This is the second round of litigation between the parties.

3. On earlier occasion, services of the petitioner as LDC were terminated. Matter went right up to Hon'ble Apex Court. The respondent authorities had placed on record order dated 11.10.1995 passed by respondent No.3, the extract of which is as under :-

> “In compliance of the order of Honourable Supreme Court of India, dt.3/8/95 in SLA (Civil) No.4818/88, Shri Nizam A. Shaikh LDC, working in the office of the Jt.Director General of Foreign Trade, Ahmedabad has made representation to the Jt. Director General of Foreign Trade, Bombay. His representation dated 5/9/95 had been considered sympathetically and it has been decided to regularize his services from the date of his initial appointment as Lower Division Clerk w.e.f. 25/3/1980.
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> In pursuance of the above decision, his seniority position will be fixed between

> Smt.Sudha Pillai and Shri H.Prakash for due benefits. However, his promotion, taking into consideration his length of continuous service in the department is kept under abeyance till the Cadre review undertaken by DGFT is completed.
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> This issued with the approval of the Jt.Director General of Foreign Trade".

4. Thereupon, the Hon'ble Supreme Court disposed of that SLP as infructuous.

5. From the above order dated 11.10.1995, it is clear that services of the petitioner were regularized from the date of his initial appointment as LDC w.e.f. 25.3.1980 and his seniority was to be fixed between Smt.Sudha Pillai and Shri H.Prakash for due benefits. Only thing remained to be done regarding promotion which was kept in abeyance till cadre review was undertaken and completed by DGFT-respondent No.1.

6. Before the DGFT – respondent No.1 undertook and complete the cadre review, an order dated 3.4.1996 was passed promoting the petitioner on ad-hoc basis on the post of UDC and posted

at Mumbai. In pursuance of the order dated 3.4.1996, the respondent No.3 issued circular dated 19.4.1996 calling for the willingness of the employees concerned on or before 25.4.1996. The petitioner submitted his representation on 20.4.1996 and in pursuance to it, the respondent No.3 passed an order dated 14.5.1996 stating that he (petitioner) insisted for promotion at his present place of posting i.e. Ahmedabad, which was not possible and when he (petitioner) was called upon to give his option of accepting promotion on transfer or to continue to work on the same post, he (petitioner) stated in writing on 17.5.1996 that he was not willing to accept promotion as UDC at Mumbai and further requested the authority to allow him to continue to work as LDC at Ahmedabad. This was done under threat and coercion, as stated by the petitioner and, therefore, immediately within 5 days i.e. on 22.5.1996 he wrote a letter to the authority stating

that his previous letter dated 17.5.1996 was obtained under threat and coercion and, therefore, the said letter may not be considered as binding to him (the petitioner) and prayed for all the benefits including promotion as per the order of the Hon'ble Apex Court. He was not given promotion and extended other benefits as per the order of the Hon'ble Supreme Court. Therefore, he first approached the learned Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “Tribunal”) by way of O.A. No.349 of 1996. On 24.5.1996 the Tribunal while issuing notice on it, by way of interim relief, directed the respondents to maintain status quo. The said order was modified on 24.6.1996 by the learned Tribunal to the extent that the petitioner will not be entitled to claim any salary of UDC during the period of interim relief operating in his favour. Reliefs, including interim relief, prayed for in O.A. No.349 of 1996 have been

reproduced in para 3.6. of this petition.

7. O.A. No.349 of 1996 filed by the petitioner before the Tribunal came to be dismissed on 25.1.2002. Hence, this petition.

8. Mr.Kariel learned counsel for the petitioner has drawn our attention to the averments made in para 8 of the reply affidavit dated 29.11.2002 filed by Mr.B.H.Gameti, Dy. Director General of Foreign Trade – respondent No.3, wherein he has stated that "....I further say and submit that if the seniority of the petitioner is fixed in between Sudha Pillai and H.Prakash, it will be unjust to the aforesaid persons and it will also be illegal as the same will be against the rules and regulations on the subject" and submitted that this is clearly against the order passed by the Hon'ble Supreme Court in SLP which amounts to *per se* contempt.

9. In view of the above, Mr.Malkan learned Assistant Solicitor General states that let

the petitioner may make proper representation to the Director General of Foreign Trade – respondent No.1 for his grievances made in the petition in light of the order passed by the Hon'ble Supreme Court. Learned counsel Mr.Kariel, therefore, seeks permission to withdraw not only this petition, but also the O.A. filed before the Tribunal, with a liberty to file detailed representation before the respondent No.1.

10. If the detailed representation is made by the petitioner within one month from today to the respondent No.1, then we are sure that the respondent No.1 will consider and decide the same in accordance with law as early as possible, preferably within 4 months from the receipt of the representation, after extending an opportunity of hearing to the petitioner by a brief reasoned order, without being influenced by the impugned order passed by the learned Tribunal and the observations made in it. We also make it clear that if

the decision is adverse to the petitioner, then it will be open to him to challenge the same before the appropriate forum by way of appropriate proceedings.

11. With these observations and directions, this petition as well as O.A. are permitted to be withdrawn and accordingly both the petition and O.A. No.349 of 1996 are disposed of as withdrawn. Rule discharged with no order as to costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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